A.No.2418 of 2023
in O.P.No.1032 of 2019

K.KUMARESH BABU, J.

The present application has been filed seeking exemption for payment of Court duty by invoking the provisions of Section 56(1) of Tamil Nadu Court Fees and Suits Valuation Act, 1965.

2.Heard Ms.Aswini Anjana, learned counsel appearing for Ms.Shobana Ramsubramanyan, learned counsel for the applicant and there is no representation on the side of the respondent.

3.Learned counsel appearing for the petitioner would submit that the Last Will and the Testament of Indira Ranganathan, the Testatrix had bequeathed the immovable property standing in her name in favour of Indira Ranganathan Trust. The Testatrix had appointed the petitioner as an executor of the Will and hence the petitioner had approached this Court by seeking probate of a Will. This Court by order dated 13.09.2022 had allowed the Original Petition as prayed for. However, he would further submit that the Probate Certificate has not been issued by the Registry of this Court as the requisite Court Fee had not been paid under the provisions of the Tamil Nadu Court Fees and Suits Valuation Act, 1965.

4.She would further submit that by invoking the provisions to Section 56 (1) of the aforesaid Act, the beneficiary being a Public Charitable Trust is entitled for exemption of payment of Court Fee and therefore she had taken out an application seeking for exemption.

5.I have heard arguments of the learned counsel for the petitioner and also perused the materials available on record.

6.From the previous proceedings, it is noted that by proceedings dated 19.02.2020, the learned Master had recorded a submission made by the learned counsel for the petitioner that the beneficiary of the Will is a Public Charitable Trust and seeking to probate and hence the Court duty need not be paid and directed the Original Petition to be listed before this Court. Thereafter, the Original Petition had been listed before this Court on 14.07.2020. The learned Judge after hearing the learned counsel for the petitioner had directed the Original Petition to be listed before the learned Master for recording of evidence. Pursuant to the said order, evidence had been recorded by the learned Master of this Court and thereafter placed before this Court. This Court by order dated 13.09.2022, after considering various factors and the evidence on the side of the petitioner had granted probate of the Will.

7.Section 56(1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1965 envisages the levy of fees chargeable for grant of Probate or Letters of Administration. The learned counsel for the petitioner had heavily relied upon proviso, the aforesaid Section which reads as follows:

> ***56.Levy of fee***-*(1)The fee chargeable for the grant of probate or letters or administration shall comprise a fee at the rate or rates prescribed in Article 6 of Schedule I, computed -*
>
> *(a) where the application is made within one year of the date of death of the deceased, on the market value of the estate on such date; or*
>
> *(b) where the application is made after the expiry of one year from such date, on the market value of the estate on the date of the application:*
>
> *Provided that property held in trust not beneficially or with general power to confer a beneficial interest shall not be liable to any fee under this Chapter.*
>
> *(2)For the purpose of the computation of fee-*
>
> *(a) the value of the items mentioned in Annexure B to Part I of Schedule III shall be deducted from the value of the estate:*
>
> *Provided that, when an application is made for probate or letters of administration in respect of part only of an estate, no debt, no expenses connected with any funeral rites or ceremonies and no mortgage encumbrance on any part of the estate other than that in respect of which the application is made shall be deducted:*
>
> *Provided further that when, after the grant of a certificate under Part X of the Indian Succession Act, 1925 (Central Act XXXIX of 1925), or under Bombay Regulation VIII of 1827 in respect of any property included in an estate, a grant of probate or letters of*

administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant;

(b) the power of appointment which the deceased had over a property or which was created under a will shall be taken into account, the value being taken to be the value of the property forming the subject-matter of the power.

8.From an analysis of the aforesaid proviso, it could be seen that if a property is held in Trust and not with benefit or beneficial interest then the proviso envisages an exemption. In the present case, the testatrix had executed a Will appointing the petitioner herein as the Executor of the Will and had bequeathed the property in favour of the respondent. A reading of the Will do not confer any benefit or beneficial interest on the Executor/the petitioner herein and that after the death of the Testatrix, he only holds the property in Trust till the probate of the Will. Since the petitioner is holding the property in Trust before handing it over to the beneficiary under a Will without any benefit or beneficial interest, he would be entitled to an exemption provision to Section 56(1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1965.

9.In fine, the application is allowed.

10.Registry is directed to issue a Certificate of Probate as ordered by this

Court in its order dated 13.09.2022.

22.06.2023

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K.KUMARESH BABU, J.

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